Supreme Court, U.S.
FILED
081271 APR 4 - 2009
OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

LOUTO J. BRAQUET, JR.,
Defendant-Appellant-Petitioner,

v.

UNITED STATES OF AMERICA,
Plaintiff-Appellee-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

WITH APPENDIX A

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Questions Presented

Appellate court clerks—Decision-making authority

1. Does an appellate court (deputy) clerk have decision-making authority, at all? (New—Subject Matter Jurisdiction)

2. If so, then, in general, may the appellate court compel consent to decision-making by the clerk?

3. Specifically, may an unconsented-to clerk consolidate very separate appeals, at all, much less *sua sponte* and by "secret order"?

No Notice–Procedural

4. Did USOA ever give proper Notice?

    a. Is the irs an "interested party"?
    b. Did Plaintiff serve proper Notice within 120 days?
    c. Did Plaintiff sue and serve all indispensable parties?
    d. Did the trial court ever have personal jurisdiction?

No Notice—Substantive

5. Did SMELTZER ever prove his signature authority?

6. Did Plaintiff ever assert a claim?

No subject matter jurisdiction

7. Did the trial court ever have subject matter jurisdiction?

More Due Process Issues

8. Did Braquet have a meaningful opportunity to be heard?

9. Did the trial court unlawfully shift the burden of proof?

10. Were the presumptions rendered irrebuttable?

11. Did the denial of discovery constitute denial of access?

No evidence

12. Is there any evidence supporting the judgment?

Void Judgment

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Petition for a Writ of Certiorari

Braquet petitions for a writ of certiorari to the federal appellate court ("the fifth") as follows:

Citations to decisions below

None for these appeals.

Jurisdiction

(i) Date of "the fifth's" "judgment"
20 March 2009 [1] [+90: 18 Jun 2009].

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding Rule 29.4(b)
United States of America is a party. All activity conducted in the name of Title 28 courts.

No Oral Argument Requested

Oral argument is not expected to aid in the resolution of this matter.

Statement of the Case

Trial Court Jurisdiction

USOA's unverified allegations.
28 U.S.C. §§ 1331, 1340, 1345; irc § 7402.

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[1] Given the disparity in "mail in transit" times, Braquet notes that he received the 20 March "judgment" in hand on 27 March.

Braquet's verified response(s).
To this effect:
The Sarah; *356 Bales of Cotton*; *Romero*.
Burger King, 471 U.S. at 486.
Colorado River; 28 U.S.C. § 1746, § 3002(15)(A).
And, there is no evidence satisfying irc § 7401.

USOA's unverified reply.
18 U.S.C. § 7 (via irc § 7201 (*payment*)).

Directly related cases

Nos. 07-1106, 07-1419, 08-288, 08-718, and 08A447. All those petitions are incorporated.

Closely related cases

Nos. 03-1541, 03-1542, 04-1345 (*but cf.* 04-7513), 05-521, 05-1091; 05-90, 05-486; 05-1487; 05-1557; 05-1364, 06-860.

"O say, can you see, by the dawn's early light, What so proudly we hailed at the twilight's last gleaming?" Francis Scott Key, "Defense of Fort M'Henry".

"I have often looked at that picture behind the president without being able to tell whether it was a rising or setting sun. Now at length I have the happiness to know that it is indeed a rising, not a setting sun." Benjamin Franklin, at the signing of the Declaration.

Appellate court clerks—Decision-making authority

The (deputy) clerks are not § 451 "judges". Thus, if they have signature authority to enter rulings, at all, *see* FED. R. APP. P. 27(b), it would be "by consent only". *Cf. Gonzalez*. Braquet not only has never so

consented but also has overtly objected to non-judicial decision-making from the outset.

This petition addresses *two* appeals, which ended up with *three* case numbers; however, "the fifth" used only one in their case style/heading. No. 08-20342 is the original appeal of the order allowing the sale of Braquet's home. Braquet amended that Notice of Appeal, and "the fifth" assigned a new number: 08-20470. Braquet also appealed the ruling denying relief under Rule 60(b). That appeal is No. 08-20471. Braquet paid separate filing fees.

The deputy clerks entered several rulings in this matter. Of focus here are the rulings purporting to merge/consolidate the two appeals. In a closely related appeal, No. 08-60146 (5th Cir.), "the fifth" overtly confirmed its intent to compel Braquet to consent to non-judicial decision-making. [2] Per that policy, "the fifth" effectively have put the deputy clerks in the regular rotation as members of the motions panel. Because Braquet did not consent to non-judicial decision-making, as evidenced by filing separate briefs and separate reply briefs, the clerks refused to file (A) his brief in 471 and (B) his reply briefs in ***both*** cases.

The motions and objections filed with "the fifth" raise and preserve the compelled consent point. *See* Questions 2 and 3. The *Gonzalez* decision, while recent, started in Houston and passed through "the fifth". Yet, "the fifth" have pressed this issue well beyond not only the law but also toleration. Thus, new here is the subject matter jurisdiction analysis.

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[2] The intent is so virulent that SMITH falsified the Record by renaming Braquet's motion to ***strike*** (sounding in ***objection*** to non-judicial decision-making) as a motion to **reconsider** (sounding in **consent** to non-judicial decision-making).

No Notice—Procedural

DOJ filed the foreclosure suit 11 Sep 2007. The sole effort at service on Braquet was by an irs agent. The 120-day period for service came and went without any other service on Braquet.

DOJ also sued the purported mortgagee (where's the note?) but neither sued nor served any other real parties in interest in the subject property.

No Notice—Substantive

SMELTZER (doj, Dallas) never satisfied § 7401. Thus, the complaint is both unauthorized and unsigned as a matter of law.

Moreover, the complaint comes nowhere near establishing any commercial nexus. It asserts no agreement, no fiduciary, no beneficiary, and no trust *res*. Thus, doj nowhere even attempts to satisfy its threshold burden; hence, the complaint asserts no claim of any breach much less for damages.

Still further, the plaintiff is not the party purporting to assert the lien. There is no evidence of any subrogation, and no party purporting to be a real party in interest ever substituted in.

Additionally, in light of The Patriot Act, doj now has an affirmative duty to prove where every penny goes or else lose to the defense of illegality. Plaintiff nowhere included that information in the complaint, and the case was over so fast Braquet was completely denied discovery.

Also, doj nowhere explains how the same land can be a *res* for two trusts simultaneously.

Ultimately, once SMELTZER turned this § 7401 case into a § 7201 (*payment*) case, by retaliating against Braquet, "charging" him criminally because Braquet defended himself and demanded proof of

doj's claim, SMELTZER obligated himself to produce a verified assessment. The Record contains no such verified assessment.

No subject matter jurisdiction

USOA has not satisfied § 1331 or § 1340. Given the stark absence of any § 7401 authorization, USOA hasn't satisfied § 7402, either. Since the party asserting the lien and the plaintiff are two different parties, USOA hasn't satisfied § 1345, either.

If one or more of those does apply, USOA still never proved its standing. In addition to there being no commercial nexus even alleged, there is also no verified assessment. In fact, the only evidence of Record is Braquet's.

More Due Process Issues

No discovery; no hearing; no summary judgment proceeding; no trial. Braquet was afforded neither Notice nor opportunity to be heard, and USOA was totally relieved of all burdens of proof, irrebuttably.

No evidence

As already detailed, *supra*, plaintiff can point to no evidence supporting the judgment.

Capacity

While both active parties properly appeared, the trial court never recognized that fact.

Summary Judgment to a no-show party

The order allowing the sale of Braquet's home includes Countrywide as a recipient of proceeds. To distribute anything to Countrywide is to give an entity that never even showed up, never pled, and

never proved up any claim, a summary judgment. Countrywide's "claim" is as non-existent as doj's. For example, where's the note?

Void Judgment

The trial court never had personal jurisdiction or subject matter jurisdiction. The trial court also engaged in repeated, horrific, impossible-to-miss, glaring Due Process errors, allowing "the fifth" an opportunity to repent. Either "the fifth" intentionally perpetuate their rebellion against their oaths, or else these errors went sailing over "the fifth's" heads.

The trial court's judgment is void, and the case should have been ordered dismissed.

Argument

Appellate court clerks—Decision-making authority

1. Does an appellate court (deputy) clerk have decision-making authority, at all? (New—Subject Matter Jurisdiction)

Just compare the oaths of office.

Cf. § 453 *with* § 951. In the former, there's at least a reference to the archived document called the Constitution, as well as to the laws of the United States. In the latter, the oath is to obey the "judges". No appellate court clerk takes even a feigned oath to abide by the laws of the United States. Why not? Because the congress never intended for § 711 and § 956 clerks to be decision-makers!

But see FED. R. APP. P. 27(b).

Compare the duties contemplated.

If the clerks were to be decision-makers, then surely the congress not only would bind them by oath to the laws of the United States but also would spell out legislatively the scope of such authority. But, to compare §§ 631 and 636 with §§ 711 and 956 is to see a stark contrast. Clearly, magistrates *are* designed to be alternative decision-makers. Just as clearly, appellate court clerks *are not*.

This goes beyond compelled consent.

FED. R. APP. P. 27(b) doesn't exist accidentally, but procedural rules do not give (deputy) clerks subject matter jurisdiction to enter rulings. Where party agreement can't enlarge the legislatively pre-approved scope of "judge", which ***is*** a *decision-making* office per legislative intent and design, how much less does party agreement turn the *non-decision-making* office of clerk into a decision-making office, at all?

Each office has its limits. Appellate court clerks are not decision-makers. If the clerks are ever to be decision-makers, the congress, not the 'judges", are the only ones with the authority to change that. Thus, at the very, *very* least, we're looking at a Separation of Powers problem where a "court" creates an entirely different judicial structure. We crash through the Separation of Powers barrier at rocket speed where the court compels a litigant to participate in that alternative structure, especially where litigant overtly and repeatedly objects to the non-judicial decision-making.

What "the fifth" has done is elevate the clerks to the level of § 451 "judges", bringing the clerks into the regular rotation on the motions panel, if the

motion requests a particular type of relief. FED. R. APP. P. 27(b); 5TH CIR. R. 27. If clerks were *recognized* **alternative** decision-makers, there'd be (A) an order, *of Record*, *cf. Ballard*, "assigning" the case to the non-judicial decision-maker and (B) an order, *of Record*, *cf. Ballard*, "referring" the case to the non-judicial decision-maker, which order would document clearly the unanimous consent of the parties. *Cf. Gonzalez.* Since clerks are entering rulings *without* those pre-ruling procedures, "the fifth" clearly consider the clerks as members of the motions panel.

But, since the clerks have no oath to abide by anything but the "power and duties" assigned them by the "judges", "the fifth" effectively have created a new judicial structure via judicial fiat, i.e., by "force", i.e., using color of law and office. That new judicial structure does not even try to *feign* respect for the laws of the United States. In "the fifth's" new judicial structure, the decision-makers are not nominated by any executive, approved by any senate vote, appointed by any executive, or bound by oath that at least mentions and recognizes the laws of the United States. Instead, the decision-makers are *hired* in and then bound by oath only to perform the "powers and duties" assigned them by the "court".

The key item of proof that it's a completely different *structure*, with a completely different foundational choice of law, is the existence of the compelled consent angle. If "the fifth's" new structure were simply a new take on non-judicial decision-making within the *existing* structure, i.e., a mere (but alarming) misunderstanding of the limits imposed on those holding the office of (deputy) clerk, then **surely** "the fifth", of ***all*** the appellate courts, would recognize that non-judicial decision-making

happens one and only one way: **"If the parties consent ...."** *Gonzalez.*

So, while this is the first time this issue of lack of subject matter jurisdiction in the appellate court (deputy) clerks is raised in this matter, it is hoped that this is also the only petition for certiorari necessary to curb this particular path of judicial tyranny, which description is still a mild one.

Summary.

No matter what "the fifth" wants the clerks' "powers and duties" to include, the (deputy) clerks are not § 451 "judges", and they have no subject matter jurisdiction. FED. R. APP. P. 27(b) and 5TH CIR. R. 27 violate Separation of Powers and Due Process.

2. If so, then, in general, may the appellate court compel consent to decision-making by the clerk?

For whatever reason FED. R. APP. P. 27(b) exists, the clerk's office was not created with decision-making authority. *See* Question 1.

If the congress ever change that, it will *still* be the case that no "court" may compel any party to consent to non-judicial decision-making. *Cf. Gonzalez.*

3. Specifically, may an unconsented-to clerk consolidate very separate appeals, at all, much less *sua sponte* and by "secret order"?

If the appellate court wants to write one opinion, fine. Let them file a show cause order to consolidate

allowing an opportunity to be heard. And, let them include ***both (all)*** case numbers in the case style.

Here, there are two rather different appeals and three case numbers. Since only one of those numbers appears in the case style, it follows that the cases have been merged. And not only that, but also one appeal is completely non-recognized. [3] This is tantamount to rewriting Braquet's Notices of Appeal, and still worse, ignoring one of them, the appeal of the Rule 60(b) ruling, under the disguise of merger.

By what authority does "the fifth" purport to rewrite a Notice of Appeal, ignore a Notice of Appeal, or merge appeals? By a "secret" "order" thought into existence by a (deputy) clerk. There is no motion, no show cause order, and no order signed by a § 451 "judge". But, there is obviously a merger, since 471 is ruled on under the name and number of 342/470.

Nothing about the final judgment fixes anything. It presumes the existence of clerical decision-making authority, or else why is there only one case number? So, it *reports* and *depends on* the clerical "rulings", thereby overtly aiding and abetting the practice. It is a materially false statement to say "court", which suggests § 451/§ 453, where the reality is non-judicial decision-making, as in §§ 711 and 956, per § 951.

No Notice–Procedural

4. Did USOA ever give proper Notice?

Where there is no Notice, the judgment is void. *See Harris,* 55 U.S. at 339. *See also Milliken* (the

[3] Braquet finds no reason to think otherwise simply because the Rule 60(b) appeal, "471", was addressed in "342/470".

Wyoming judgment was valid because service was valid; hence, the Wyoming court *did* have personal jurisdiction); *Peralta* (even "meritorious defense" issue is irrelevant to question of Notice). *See also Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."); *Hamdi*; *International Shoe*; *Mullane*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*.

a. Is the irs an "interested party"?

Rule 4(c)(2).

(2) Service may be effected by any person who is not a party ....

Rule 4(c)(2).

Systemic confusion.

It's facially inconsistent to say both (A) that comm'r is a real party in interest and has standing for purposes of *tax court* **and** (B) that the irs is disinterested for purposes of service in *federal court*. The fact that the irs has no capacity to sue or be sued does not mean it's not an interested party.

Estoppel via actions.

The party taking charge of the sale is the ***irs***. If the ***irs*** has that much interest after judgment, it follows that the ***irs*** is just as interested from the outset. Where the irs *act* like a party, how do they avoid the Rule 4(c)(2) restriction? *Brant*, 93 U.S. at 335-36 (equitable estoppel).

b. Did Plaintiff serve proper Notice within 120 days?

Rule 4(m).

Rule 4(m) requires that service be completed

within 120 days after the suit is filed. Thus, the deadline for service of the suit filed 11 September was 9 January. There was only the one effort at delivery of summons and complaint.

c. Did Plaintiff sue and serve all indispensable parties?

Notice to all interested parties.

How does ***any*** suit in equity proceed without proper notice to all interested/affected parties? *Teamsters*, 494 U.S. at 584, 586 (a trustee has no principal). *Cf. Martin* (non-parties to an agreement (consent decree) are not bound by it); Rules 19(a), (b).

Cf. Pacific Live Stock Co., 241 U.S. at 449 (equitable determination of water rights required presence of all interested parties); *Colorado River* (all parties to water rights management program were properly before the *state* court); *California v. Arizona* (1979) (S. Ct. have jurisdiction over indispensable parties despite statute suggesting otherwise).

Thus, USOA's suit is facially defective from the outset. *See Provident Bank* (Rule 19, indispensable parties). *Cf. Nevada*, 463 U.S. at 118 n.6 (pleading amended to include indispensable parties). Not only must service be accomplished by a non-party, Rule 4(c)(2), but also all parties with an interest in the property have to be served. *Martin*. So, even if an irs agent ***is*** somehow eligible to serve process in a "tax" case, USOA never even named, much less served, several indispensable parties.

d. Did the trial court ever have personal jurisdiction?

Since Braquet was never served, and since no other indispensable party was even named in the suit, much less served, it follows that the trial court never had personal jurisdiction over Braquet or over any other indispensable party. *Mullane*, 339 U.S. at 314 (interested parties have to get Notice and an opportunity to be heard). *See also Cotton Mills*, 237 U.S. at 196-97 (No Notice?—void judgment).

No Notice—Substantive

5. Did SMELTZER ever prove his signature authority?

No § 7401 authorization.

The Record contains no evidence of any § 7401 authorization.

The relevant agency theories.

ACTUAL AUTHORITY AND APPARENT AUTHORITY.

Agency cannot be presumed; the purported agent must prove his agency. *See Schultz*, 956 S.W.2d at 760; *Zuniga* (citing *Bernsen*, 52 S.W.3d at 309); *Alamo Cmty. Coll. Dist.* (citing *S. County Mut. Ins. Co.*, 750 S.W.2d at 172)); *Disney Enters., Inc.*, 981 S.W.2d at 30; *Gray* (agency is not presumed; wife cannot be presumed to be husband's agent).

"[O]nly an alleged principal's words or conduct that are represented to the third party can clothe an alleged agent with apparent authority. [*BML Stage Lighting, Inc.*, 14 S.W.3d at 401]." *Coleman*, 180 S.W.3d at 588. In short, the alleged agent's word, alone, never proves agency.

Braquet has challenged SMELTZER's agency authority from the outset. Over his objection, agency has been presumed into existence, thereby shifting the burden. *See* Question 9. Thus, Braquet challenges the concept that where there is no specific finding of fact, the presumption favors the implied finding, thereby turning the matter into a sufficiency of evidence matter when on review. *Cf. Coleman.* The implied finding here favors agency, which is an issue of fact, which finding is made without any evidence, summary judgment procedures, hearing, trial, etc., much less without any burden on SMELTZER. Thus, while it may *also* be a *sufficiency* point, first it is a *shifting of the burden* point.

SMELTZER HAS NO ACTUAL AUTHORITY.

Actual authority arises where the principal authorizes the agent. *See Cameron County Sav. Ass'n*, 819 S.W.2d at 603. Since USOA has presented no evidence under § 7401, there is no actual authority for this suit, meaning that SMELTZER has no Rule 11 signature authority, as Braquet has objected to from the outset.

SMELTZER HAS NO APPARENT AUTHORITY.

USOA has said absolutely nothing to Braquet about anything about any agency in doj, or in anyone or anything else, as far as that goes. Again, the Record is absolutely silent when it comes to evidence regarding such communications. Since SMELTZER, is the party asserting agency, SMELTZER has the burden to prove his agency. *See Schulz*, etc., *supra.* Again, the burden has been shifted where agency is presumed. *Cf. Coleman.*

SMELTZER has no Rule 11 signature authority.

Since SMELTZER has proved no agency authority, SMELTZER has no Rule 11 authority.

There is no Original Complaint.

Since SMELTZER has no Rule 11 authority, there is no original complaint; hence, no Notice (or subject matter jurisdiction), as a matter of law.

6. Did Plaintiff ever assert a claim?

Eo nomine failure.

Plaintiff is not the *eo nomine* party. Rule 17(a).

No real party in interest ever showed up.

Plaintiff is not a real party in interest. Rule 17; *Lujan*. Braquet has objected, but no purported real party in interest ever substituted in.

USOA failed to satisfy its threshold burden.

USOA carries the threshold burden of proof. BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."), § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery).

There are basically three elements to a trust: (1) a trustee; (2) a beneficiary; and (3) the trust *res* (property). RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS).

USOA has provided no agreement showing (A) that Braquet owes it any fiduciary duty, (B) that it is a beneficiary, ***or*** (C) that there is any trust *res*. Where USOA fails even to allege, must less provide evidence of, the existence and identity of the alleged

beneficiary (beneficiaries), then there simply is no trust. *See* SCOTT, ABRIDGMENT, LAW OF TRUSTS, §§ 66 (necessity of beneficiary and trust property), 112 (necessity of beneficiary). Where USOA fails even to allege, much less provide evidence of, the existence of any trust property, then there simply is no trust. *Id.* at §§ 66 (necessity of beneficiary and trust property), 74 (necessity of trust property). *See also* Rules 9(a), 17(a).

Also, where Plaintiff fails even to allege, must less provide any evidence of, a writing signed by the party to be charged, here Braquet, that satisfies the Statute of Frauds, *see e.g.*, TEX. PROP. CODE § 112.004, then there is not even basis by which to identify a fiduciary duty, much less who it is that is to be charged with satisfying that non-existent duty. In short, there is no evidence of any agreement. *Cf. Gonzalez* ("If the parties consent ..."; hence, non-agreement to magistrate participation vitiates magistrate authority); *Arnold*; *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion) (non-agreement by even one beneficiary prevents amendment of the agreement).

Not liable in capacity asserted.

Rule 9(a). Since USOA never even acknowledges, much less alleges, much less provides evidence regarding, the underlying fiduciary obligation nature of the federal "income tax" obligation, it follows that whatever capacity USOA thinks Braquet is liable through, i.e., "citizen" alone, Braquet isn't liable through it. For all the reasons asserted in his motions to dismiss, Braquet wouldn't be liable even if USOA ***had*** alleged a fiduciary obligation. But, ***no one*** is liable for ***any*** "income tax" obligation in the capacity asserted, here. No one is liable for any

"income tax" solely in the capacity of a "citizen", because there is no capacity other than a fiduciary capacity by which ***anyone*** could ever have ***any*** "income tax" obligation.

Irrefutable evidence of disclaimer.

In response to doj's suit, Braquet filed nine instruments, including his objection to venue, objections regarding process, and six motions to dismiss. DOJ's brilliant, consolidated response to Braquet's position "charged" Braquet ***criminally***, alleging "evasion" of "payment".

Thus, if there ever was any fiduciary agreement or obligation at issue, doj disclaimed it. *See* BOGERT §§ 170-72 (disclaimer and its effect), in particular BOGERT § 170, at 205 (Proof of Acceptance or Disclaimer) (acceptance is presumed; disclaimer/ renunciation must be supported by clear evidence). Since Braquet actually defended himself by demanding proof of the claim, and since doj retaliated, "charging" Braquet criminally, the Record contains more than sufficiently "clear evidence" of disclaimer.

> Conduct by the beneficiary which is inconsistent with a trust for his benefit may amount to an implied disclaimer. ... Statutes which require "surrender" of such trusts to be in writing do not apply, since a surrender is based on a giving up of an existing equitable interest, whereas a disclaimer amounts to a refusal to accept a gift of an equitable property right.

BOGERT § 170, at 207. Since a beneficiary is such from the trust's creation date, disclaimer operates *nunc pro tunc* to that same date. BOGERT § 172, at

227-28.

> Where, as is usual, the creation of the trust is by way of gift, the relationship between the settlor and beneficiary may influence a court in deciding whether a trust intent existed. If the parties are on bad terms, as where the alleged beneficiary has been mistreating the supposed settlor, the creation of a trust is rendered unlikely.

BOGERT § 50 at 108.

DOJ's disclaimer speaks clearly and directly against the present judgment.

Illegality.

This issue doesn't really come up, because USOA never proved up any agreement. But, to address this anyway, illegality is an affirmative defense. Braquet carries the burden of persuasion. *Dixon*. However, the relevant information is within USOA's control, placing on USOA the burden of production, which burden USOA never satisfied.

USOA has yet to produce the information that proves that the proceeds from these clandestine "income tax" trusts do not finance "terrorists". From the instant Braquet filed his objections raising this point, USOA has had a duty to speak. USOA has, however, gone completely silent. That silence doesn't satisfy its duty under The Patriot Act, and it doesn't support the judgment, either. Based on the information subject to Judicial Notice, proceeds from the "income tax" scam ***do*** finance "terrorists". Thus, there's not one purported "income tax" obligation anywhere, the world over, that is enforceable,

because all such trust agreements are illegal. [4]

Complaint not verified.

The complaint was never verified. Rule 9(h). *Cf.* Rules B and C. Rule B isn't as direct as Rule C. Where *agency* matters have to be verified, *judicial* matters have all the more to be verified.

Then, because SMELTZER "charged" Braquet with "evasion" of "payment", he turned this case into a commercial irc § 7201 (*payment*) case. Therefore, per *England*, USOA had to produce a verified assessment. No such evidence exists.

Since there is no assessment, there is no valid claim, lien, or "Notice of" Lien.

Summary—USOA never asserted a claim.

In sum, in addition to there being no Notice procedurally, there is also no Notice substantively. USOA never asserted a claim.

No subject matter jurisdiction

7. Did the trial court ever have subject matter jurisdiction?

Not a "federal question" § 1331 case.

"A case in admiralty does not, in fact, arise under the Constitution or Laws of the United States." *Am. Ins. Co.*, 26 U.S. at 545. *See also The Sarah*; *Romero.*

Not an "Act of Congress" § 1340 case.

Any "income tax" case sounds in trust, not in any

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[4] Via The Patriot Act, either the congress outsmarted themselves, or they created a "justification" to arrest just about anyone, or huge groups of people, at any time.

Act of Congress. USOA must prove up an **agreement, *not* a statute!** *Burger King*, 471 U.S. at 486 (compelled agreements are not agreements). *Cf.* § 3002(15)(A) ("a Federal corporation"). A corporation operates under the proprietorship doctrine; hence, the necessity of an **agreement**.

Not a "United States as plaintiff" § 1345 case.

Per all documents delivered to Braquet, the plaintiff is USOA, which renders § 1345 facially irrelevant and inapplicable.

Not a § 7402 case.

If § 1345 would otherwise provide jurisdiction, there is still no § 7401 authorization; hence, no Rule 11 signature authority; hence, no complaint; hence, no subject matter jurisdiction.

Plaintiff has no standing.

If § 1345 would otherwise provide jurisdiction, USOA still has no standing. The party to the lien being enforced is not USOA.

In addition to the Rule 17 problem, USOA has not even alleged facts, much less verified such facts, that show or demonstrate any "injury in fact". *Lujan*. To be "injured" in an "income tax" case, USOA has to prove it is a named beneficiary (or properly standing in the shoes of a named beneficiary) of a lawful trust. *See* Question 6. USOA wholly failed to allege that it is a beneficiary, or that there is any trust *res* or any fiduciary, or any writing proving all that up. *See* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112; TEX. PROP. CODE § 112.004. Therefore, since USOA has not even remotely alleged, much less provided evidence supporting, any trust, it follows that USOA has no "injury in fact".

More Due Process Issues

8. Did Braquet have a meaningful opportunity to be heard?

See Question 4 for the Due Process cites.

There was no hearing, no summary judgment, and no trial. USOA filed its unauthorized, unsigned, unverified complaint, and Braquet filed his verified motions to dismiss. Then the court conducted a settlement conference, at the end of which came the final judgment.

9. Did the trial court unlawfully shift the burden of proof?

To presume that which must be proved is to shift the burden.

Each of these is presumed, not proved, over Braquet's objections:

- Signature authority, i.e., agency, has been presumed, not proved. Question 5.
- Real party in interest has been presumed, not proved. Question 6.
- Standing in USOA has been presumed, not proved. Question 7.
- Threshold burden of proof has been presumed, not proved. BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust.").
- Liability has been presumed, not proved.
- The amount alleged due has been presumed to be true, not proved.
- Capacity has been presumed, not proved.

- Service of Process by an irs agent in a "tax" case manifestly violates the requirement that Service be accomplished by a disinterested party, rendering satisfaction of Rule 4(c)(2) presumed, not proved.
- Personal jurisdiction over the rest of the parties with an interest in this property fails and was never even attempted, thus is presumed, not proved. Question 4.
- Subject matter jurisdiction has been presumed, not proved. Question 7.
- Braquet's defenses, if they are triggered by the presumption of liability, which is based on other presumptions of satisfaction of other conditions precedent, have also been presumed away. Question 6.

Beard (citing *Anderson*, 477 U.S. at 255); *Scott* (citing *Diebold*, 369 U.S. at 655) (summary judgment presumptions are against movant). *Mullaney* (citing *In re Winship*) (to relieve plaintiff of burden is to violate Due Process); *Heiner*.

10. Were the presumptions rendered irrebuttable?

There was no opportunity to be heard.

See Question 9. *Elkins*; *Salfi* (in particular part III, discussing why *Salfi* is distinguished); *LaFleur*; *Vlandis*; *Stanley*.

No discovery; no hearing; no summary judgment proceeding; no trial. USOA didn't even prove standing, but it has a judgment. Therefore, the case against Braquet has been presumed, irrebuttably.

11. Did the denial of discovery constitute denial of access?

Since there was no pre-trial activity, whatsoever, Braquet was also denied discovery, thus denied access to the court. *Ins. Corp.*; *Hammond Packing Co.*, 212 U.S. at 350-51; *Roadway Express, Inc.* (citing *Nat'l Hockey League* (citing *Societe Internationale*, 357 U.S. at 212-13)).

No evidence

12. Is there any evidence supporting the judgment?

No evidence of personal jurisdiction.
See Question 4.

No evidence of agency.
See Question 5.

No evidence of injury, thus of claim.
See Question 6.

No evidence of subject matter jurisdiction.
See Question 7.

No evidence of Due Process.
See Questions 8, 9, 10, and 11.

In sum, no evidence supports the judgment.

USOA offered no evidence, period, which means that the sole evidence of Record is Braquet's, *O'Connor* (uncontroverted Affidavit accepted as true). None of Braquet's evidence supports the judgment or any of the orders.

Bank of the United States (evidence ultimately

determined sufficient, but due diligence is required of claimant asserting claim against endorser, not maker, as to place of presentment); *Roselius* (evidence of perfect land title insufficient to support federal jurisdiction); *Jones Nat'l Bank* (is there substantial evidence to support the charge?); *Sinclair*, 279 U.S. at 761 (no material evidence to support charge); *Alexander* (no evidence supporting two of the claims); *Swift & Co.* (insufficiency of statute and indictment were not issues directly appealable to Supreme Court); *Bozza* (of the five counts, four were based on insufficient evidence); *Pittsburgh Steamship Co.* (federal appellate court's "finding" of trial examiner's bias was not supported by the Record); *Thompson*, 362 U.S. at 207 nn.12, 13 ("[It is] a violation of due process to convict and punish a man without evidence of his guilt."); *Garner* (Record so devoid of evidence as to render conviction a violation of Due Process); *Barr* (peaceful "sit-in" is not evidence of breach of peace); *Johnson*, 391 U.S. at 598 (no evidence supporting an element of the charge); *Vachon*, 414 U.S. at 480 ("It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process."); *Burks* (reversal based on insufficiency of evidence activates Double Jeopardy); *Haley* ("actual innocence" defense allows review of procedurally defaulted sufficiency challenge) (STATE's evidence insufficient to justify enhancement).

Epilog. No evidence of Countrywide's interests.

Since there will be no sale of Braquet's home, this is mainly for purposes of completeness. Countrywide is being granted a "default" or "summary" judgment,

via the proposed sequence of distribution of proceeds, in the same way as USOA. And, as is exactly the same as with USOA, there is no default, no pleadings, no discovery, no evidence (where's the note?), no hearings, no trial, no nothin' proving that Countrywide has any interest in this, at all. Therefore, Countrywide will not participate in ***any*** transaction involving this property, except to deliver to Braquet all documents that demonstrate Braquet's full and clear title to the property.

Void Judgment

13. Isn't this case properly dismissed?

Dismissal is compelled.

The fact that the judgment is void is only a start. The trial courts are entitled to the strongest possible form of encouragement to dismiss this type of outrageous, incompetent non-sense upon inspection.

At the threshold, this suit was never authorized. Indispensable parties were never included. An interested party "served" process. Plaintiff never asserted a claim for which relief may be granted, much less any evidence of any claim. Moreover, DOJ hauled off and "charged" Braquet ***criminally*** because he demanded proof of the claim against him. Thus, dismissal is compelled.

Pegram (ERISA context, capacity issue); *Anza* (RICO context, causation issue). *Cf. Eberhart* (FED. RS. CRIM. P. 33, 37); *J. H. Munson Co.*; *McNutt*; *Tidal Oil Co.*; *Chase*.

Remedies and Relief Requested

Given the foregoing, Braquet requests

1. The Optimum: "Petition is granted. *Stearman* is overruled. Judgment is reversed. Case is remanded to the honorable United States District Court for the Southern District of Texas with instructions to dismiss.";
2. Also, if possible and correct: "FED. R. APP. P. 27(b) and 5TH CIR. R. 27 violate Separation of Powers and Due Process.";
3. If the case warrants, discussion on any and all issues raised;
4. The opportunity to brief any additional issues the Court may identify;
5. The non-argument calendar;
6. Costs; and
7. Any and all relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Louto J. Braquet, Jr.
Louto J. Braquet, Jr.
c/o 11630 Sagecanyon Drive
Houston, TX 77089

Appendix A
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Appendix A

Rule 14.1(i)(i)—Appellate Opinion(s)

2009 Mar 20—Final Judgment

United States Court of Appeals
Fifth Circuit
F I L E D
March 20, 2009
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08-20342
Summary Calendar

UNITED STATES OF AMERICA
Plaintiff – Appellee

v.

LOUTO J. BRAQUET JR
Defendant – Appellant

Appeals from the United States District Court
for the Southern District of Texas

Before JOLLY, BENAVIDES, And HAYNES, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Appellant Louto J. Braquet appeals the district court's order of sale and its order denying his Rule 60(b) motion. For the following reasons, we affirm the judgment [†] of the district court.

I. Procedural History

The United States originally brought suit in district court against Braquet in order reduce to judgment unpaid tax assessments, to foreclose the [⊥ 2] Government's liens for the unpaid taxes on Braquet's real property, and to obtain a sale of the property. On December 5, 2007, the district court issued a judgment of title and possession determining the amount of tax owed, foreclosing the tax liens, giving title and possession of the property to the United States, and ordering Braquet to vacate the property. Braquet filed a petition for a writ of mandamus with this court on January 11, 2008, docketed as No. 08-20023. On January 29, 2008, this court denied Braquet's petition.

Braquet then filed a notice of appeal, contesting the district court's December 5 judgment, on February 4, 2008. That appeal was docketed by this court as No. 08-20082. We dismissed the appeal for failure timely to pay the docketing fee, and, on April 24, 2008, denied Braquet's motion to reinstate the appeal. On June 16, 2008, the Supreme Court denied Braquet's petition for certiorari.

The district court entered a second order, an order of sale, on April 14, 2008. Braquet filed a notice of appeal to this Court challenging the April 14, 2008 order of sale, docketed as No. 08-20342. On June 24,

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† [N.B. They ***do*** affirm the "judgment", right after telling us that they can't reach it! *LJB*]

2008, the district court denied Braquet's motion for relief from the judgment under Fed. R. Civ. P. 60(b). On July 11, 2008, Braquet filed an amended notice of appeal, docketed as No. 08-20470. Three days later, taxpayer [sic] filed a third notice of appeal expressly challenging all adverse orders through the denial of his Rule 60(b) motion, which this Court docketed as No. 08-20470 [sic]. This court [sic] subsequently consolidated Braquet's three pending appeals in the instant proceeding.

In his brief, Braquet attempts to challenge all of the rulings of the district court, including the original judgment reducing Braquet's federal tax assessments to judgment and foreclosing tax liens. Because this court dismissed Braquet's original appeal—and denied his motion to reinstate—he cannot now appeal the substantive judgment of the district court issued on December 5, 2007. [⊥ 3] This appeal is therefore limited to Braquet's appeals of the district court's order of sale and the denial of Braquet's Rule 60(b) motion.

II. Order of Sale

A district court order setting the terms and conditions of the judicial sale is reviewed for abuse of discretion. *United States v. Garcia*, 474 F.2d 1202, 1206 (5th Cir. 1973).

After having obtained a judgment against Braquet in the amount of his unpaid income tax assessments and transferring title in Braquet's real property to the Government, the Government proceeded to move for an order of sale of the property. The district court entered the order pursuant to its authority under the Internal Revenue

Code. *See* I.R.C. §7402. Braquet argues that the district court has no authority to authorize the sale of his real property. Braquet's arguments are without merit and are based on the same "shopworn arguments characteristic of tax-protester rhetoric" that have been universally rejected by federal courts and were expressly rejected by this court in denying Braquet's petition for mandamus. *In Re Louto J. Braquet Jr.*, No. 08-20023, (5th Cir. Jan. 29, 2008) (quoting *Stearman v. Commissioner*, 436 F.3d 533, 537 (5th Cir. 2006)). Braquet's challenges in no way establish that the district court abused its discretion in ordering the sale of Braquet's property.

III. Rule 60(b) Motion

The denial of a Rule 60(b) motion is reviewed for an abuse of discretion. *First Nationwide Bank v. Summer House Joint Venture*, 902 F.2d 1197, 1200 (5th Cir. 1990); Fed. R. Civ. P. 60(b). Braquet contends that the judgment is "void" and thus the denial of the Rule 60 motion should be reviewed de novo. *See Callon Petroleum Co. v. Frontier Ins. Co.*, 351 F.3d 204, 208 (5th Cir. 2003). The denial of a Rule 60(b) motion does not bring up the underlying judgment for review on the merits. *Matter of Ta Chi Navigation (Panama.) Corp. S.A.*, 728 F.2d 699, 703 (5th Cir. 1984). [⊥ 4]

Contrary to Braquet's unfounded assertions that the judgment of the district court is void, the judgment is neither invalid for lack of subject matter or personal jurisdiction nor inconsistent with due process of law. Braquet's contentions that he had no notice or opportunity to be heard are contradicted by the record and his arguments are rife with frivolous,

not to mention sanctionable, tax protestation arguments. *See Stearman*, 436 F.3d at 536-37. Braquet is not entitled to relief from the district court's judgment under Rule 60.

The judgment [‡] of the district court is, in all respects, AFFIRMED.

2009 Mar 20—Clerk's cover letter

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

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March 20, 2009

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Bane No. 08-20342, USA v. Braquet
USDC No. 4:07-CV-2926
USDC No. 4:07-CV-2926
USDC No. 4:07-CV-2926

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‡ [N.B. This is despite the fact that this panel *just* got finished telling us that they could ***not*** reach it! *LJB*]

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH CIR. RULES 35, 39, and 41 govern costs, rehearings, and mandates. **5TH CIR. RULES 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order**. Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing maybe appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court [sic], you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

The judgment entered provides that defendant-appellant pay to plaintiff-appellee the costs on appeal. [⊥ 2]

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Joseph M. Armato*
Joseph Armato, Deputy Clerk
504-310-7651

Enclosure(s)

Mr. Louto J Braquet Jr.
Ms. Sara Ann Ketchum
Mr. Steven W Parks

Rule 14.1(i)(ii)—Additional Orders

In general, *see* No. 07-1419, App. A, No. 08-288, App. A, and No. 08-718, App. A.

2008 Jun 5 — "the fifth"; clerical letter (No. 08-20342) (see [58]).

2008 Jul 7 — "the fifth"; clerical letter (No. 08-20342) (see [58]).

2008 Jul 22 — "the fifth"; clerical letter (No. 08-20470) (see [66]).

2008 Jul 22 — "the fifth"; clerical letter (No. 08-20471) (see [67]).

2008 Aug 28 — "the fifth"; clerical letter (re: filings for 471) – "Secret order", sua sponte consolidation by clerk's office

2008 Oct 27 — "the fifth"; motions to sever denied; motion for stay (471) denied.

2007 Dec 5—Trial Court [19], Final Judgment

2007 Sep 12—Trial Court [3], unsigned, undated order setting Rule 16 settlement conference

2007 Dec 3—Trial Court [17], Minute Entry following Rule 16 settlement conference

2007 Dec 13—Trial Court [23], Denial of motions to vacate and for stay

2008 Jan 7—Trial Court [31], Denial of motions for stay (construed from responses)

2008 Jan 8—Trial Court [32], Denial of motion for new trial

2008 Jan 17—Trial Court [35], Denial of motion to dismiss, Rule 4(m)

2008 Feb 15—Trial Court [44].

2008 Apr 14—Trial Court [54], Order for Sale of Realty

2008 May 23—Trial Court [59], Denial of motion to stay sale

2008 Jun 24—Trial Court [64], Rule 60(b) motion denied

2008 Jul 17—Trial Court [72], Denial of motion to stay

2008 Aug 4—Trial Court [76], Eviction

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

FED. R. CIV. P. 4(c)(2). *See* Question 4.a.

FED. R. APP. P. 27(b).

(b) *Disposition of a Motion for a Procedural Order.*
The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, **and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions.** [emphasis added.] A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

5TH CIR. R. 27.

27.1 Clerk May Rule on Certain Motions.

Under FED. R. APP. P. 27(b), the clerk has discretion to act on, in accordance with the standards set forth in the applicable rules, or to refer to the court, the procedural motions listed below. The clerk's action is subject to review by a single judge upon a motion for reconsideration made within the 14 or 45 day period set by FED. R. APP. P. 40.

27.1.1 To extend the time for:

filing answers or replies to pending motions;

paying filing fees;

filing motions to proceed in forma pauperis;

filing petitions for panel rehearing and rehearing en banc, and for reconsideration of single judge orders, for not longer than 14 days, 30 days if the applicant for extension is a prisoner proceeding pro se;

filing briefs as permitted by 5TH CIR. R. 31.4;

filing bills of costs; and

filing applications under the Equal Access to Justice Act.

27.1.2 To rule on motions to file briefs out of time.

27.1.3 To stay further proceedings in appeals.

27.1.4 To correct briefs or pleadings filed in this court at counsel's request.

27.1.5 To stay the issuance of mandates pending certiorari in civil cases only, for no more than 30 days, provided the court has not ordered the mandate issued earlier.

27.1.6 To reinstate appeals dismissed by the clerk.

27.1.7 To enter and issue consent decrees in labor board and other government agency review cases.

27.1.8 To enter CJA Form 20 orders continuing trial court appointment of counsel on appeal for purposes of compensation.

27.1.9 ***To consolidate appeals.*** [bold emphasis added]

27.1.10 To withdraw appearances.

27.1.11 To supplement or correct records.

27.1.12 To incorporate records or briefs on former appeals.

27.1.13 To file reply or supplemental briefs in addition to the single reply brief permitted by FED. R. APP. P. 28(c) prior to submission to the court.

27.1.14 To file an amicus curiae brief under FED. R. APP. P. 29 (see 5TH CIR. R. 29.4).

27.1.15 To enlarge the number of pages of optional contents in record excerpts.

27.1.16 To extend the length limits for:
briefs under FED. R. APP. P. 32(a)(7) and 5TH CIR. R. 32;
petitions for rehearing en banc and panel rehearing under FED. R. APP. P. 35(b)(2), and 40(b);
certificates of appealability and motions for permission to file second or successive habeas corpus applications under 28 U.S.C. §§ 2254 and 2255, under 5TH CIR. R. 22; petitions for permission to appeal under 5TH CIR. R. 5; and
petitions for mandamus and extraordinary writs under 5TH CIR. R. 21.

27.1.17 To proceed in forma pauperis, see FED. R. APP. P. 24 and 28 U.S.C. § 1915.

27.1.18 To appoint counsel or to permit appointed counsel to withdraw.

27.1.19 To obtain transcripts at government expense.

27.2 Single Judge May Rule on Certain Motions. *Pursuant to FED. R. APP. P. 27(c), any single judge of this court has discretion, subject to review by a panel upon a motion for reconsideration made within the 14 or 45 day period set forth in FED. R. APP. P. 40, to take appropriate action on the following procedural motions:*

27.2.1 The motions listed in 5TH CIR. R. 27.1 that have been referred to a single judge for initial action, or for single judge reconsideration of a ruling made by the clerk, but the judge is not limited to the time restrictions in 5TH CIR. R. 27.1.1.

27.2.2 To permit interventions in agency proceedings pursuant to FED. R. APP. P. 15(d).

27.2.3 To act on applications for certificates of appealability under FED. R. APP. P. 22(b) and 28 U.S.C. § 2253 except for death penalty cases where a three judge panel must act.

27.2.4 To extend for good cause the times prescribed by the Federal Rules of Appellate Procedure or by the rules of this court except for enlarging the time for initiating an appeal, see FED. R. APP. P. 26(b).

27.2.5 To substitute parties under FED. R. APP. P. 43.

27.2.6 To exercise the power granted in FED. R. APP.

P. 8 and 9, respecting stays, or injunctions, or releases in criminal cases pending appeal, and subject to the restrictions set out in those rules; and

to exercise the power granted in FED. R. APP. P. 18, respecting stays pending review of agency decisions or orders, subject to the restrictions on the power of a single judge contained in that rule.

27.2.7 To stay the issuance of mandates or to recall same pending certiorari.

27.2.8 To expedite appeals.

27.2.9 To strike a nonconforming brief or record excerpts as provided in 5TH CIR. R. 32.5 and to strike other papers not conforming to the FED. R. APP. P. and 5TH CIR. R.

27.3 Emergency Motions.

Counsel ordinarily should file emergency motions or applications with the clerk rather than with an individual judge.

Where time does not permit filing a motion or application by mail or hand delivery, counsel may contact the clerk by telephone and request permission to file by fax;

if fax filing is impractical, then the clerk may, in extraordinary cases, accept and forward to the court a telephone communication;

thereafter, counsel must file the motion in writing with the clerk as promptly as possible (whether or not previously faxed).

The motion, application, or contact must contain a brief account of the prior actions of this or any other court or judge to which the motion or application, or a

substantially similar or related petition for relief, has been submitted.

27.4 Form of Motions.
Parties or counsel must comply with the requirements of FED. R. APP. P. 27 including the length limits of FED. R. APP. P. 27(d)(2). Except for purely procedural matters, motions must include a certificate of interested persons as described in 5TH CIR. R. 28.2.1. Where a single judge or the clerk may act only an original and 1 copy need be filed. All motions requiring panel action require an original and 3 copies. ***All motions must state that the movant has contacted or attempted to contact all other parties and must indicate whether an opposition will be filed. [emphasis in original]***

27.5 Motions To Expedite Appeal.
Such motions are presented in the same manner as other motions. Only the court may expedite an appeal and only for good cause.
If an appeal is expedited, the clerk will fix a briefing schedule unless a judge directs a specific date.

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record will suffice